GENERAL ASSEMBLY
COMMONWEALTH OF KENTUCKY

2006 REGULAR SESSION

SENATE BILL NO. 65

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The following bill was reported to the House from the Senate and ordered to be printed.

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TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY
BY K. Adler

AN ACT relating to prescriptive authority for advanced registered nurse practitioners.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 314.011 is amended to read as follows:

As used in KRS 314.011 to 314.161 and KRS 314.991, unless the context thereof requires otherwise:

(1) "Board" means Kentucky Board of Nursing;

(2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A;

(3) "Nurse" means a person licensed under the provisions of this chapter as a registered nurse or as a licensed practical nurse;

(4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:

(a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and

(b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice;

(5) "Registered nurse" means one who is licensed under the provisions of this chapter to engage in registered nursing practice;

(6) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:

(a) The care, counsel, and health teaching of the ill, injured, or infirm;

(b) The maintenance of health or prevention of illness of others;

(c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include but are not limited to:

1. Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
3. Intervening when emergency care is required as a result of drug therapy;
4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
6. Instructing an individual regarding medications;

(d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and

(e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses;

(7) "Advanced registered nurse practitioner" means one who is registered and designated to engage in advanced registered nursing practice including the nurse anesthetist, nurse midwife, clinical nurse specialist, and nurse practitioner pursuant to KRS 314.042;

(8) "Advanced registered nursing practice" means the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include but not be limited to prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905 ***and to issue prescriptions for but not to dispense Schedules II through V controlled substances as classified in KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A,130,*** under the conditions set forth in KRS 314.042 ***and regulations promulgated by the Kentucky Board of Nursing on or before August 15, 2006.***

(a) Prescriptions issued by advanced registered nurse practitioners for Schedule II controlled substances classified under KRS 218A.060 shall be limited to a seventy-two (72) hour supply without any refill. Prescriptions issued under this subsection for psychostimulants may be written for a thirty (30) day supply only by an advanced registered nurse practitioner certified in psychiatric-mental health nursing who is providing services in a health facility as defined in KRS Chapter 216B or in a regional mental health-mental retardation services program as defined in KRS Chapter 210.

(b) Prescriptions issued by advanced registered nurse practitioners for Schedule III controlled substances classified under KRS 218A.080 shall be limited to a thirty (30) day supply without any refill. Prescriptions issued by advanced registered nurse practitioners for Schedules IV and V controlled substances classified under KRS 218A.100 and 218A.120 shall be limited to

the original prescription and refills not to exceed a six (6) month supply.

(c) Limitations for specific controlled substances which are identified as having the greatest potential for abuse or diversion, based on the best available scientific and law enforcement evidence, shall be established in an administrative regulation promulgated by the Kentucky Board of Nursing. The regulation shall be based on recommendations from the Controlled Substances Formulary Development Committee, which is hereby created. The committee shall be composed of two (2) advanced registered nurse practitioners appointed by the Kentucky Board of Nursing, one (1) of whom shall be designated as a committee co-chair; two (2) physicians appointed by the Kentucky Board of Medical Licensure, one (1) of whom shall be designated as a committee co-chair; and one (1) pharmacist appointed by the Kentucky Board of Pharmacy. The initial regulation shall be promulgated on or before August 15, 2006, and shall be reviewed at least annually thereafter by the committee.

Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation;

(9) "Licensed practical nurse" means one who is licensed under the provisions of this chapter to engage in licensed practical nursing practice;

(10) "Licensed practical nursing practice" means the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:

(a) The observing and caring for the ill, injured, or infirm under the direction of a

registered nurse, a licensed physician, or dentist;

(b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board;

(c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;

(d) Teaching, supervising, and delegating except as limited by the board; and

(e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;

(11) "School of nursing" means a nursing education program preparing persons for licensure as a registered nurse or a practical nurse;

(12) "Continuing education" means offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge;

(13) "Nursing assistance" means the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse;

(14) "Sexual assault nurse examiner" means a registered nurse who has completed the required education and clinical experience and maintains a current credential from the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the State Medical Examiner pursuant to KRS 216B.400(4);

(15) "Competency" means the application of knowledge and skills in the utilization of

critical thinking, effective communication, interventions, and caring behaviors consistent with the nurse's practice role within the context of the public's health, safety, and welfare;

(16) "Credential" means a current license, registration, certificate, or other similar authorization that is issued by the board;

(17) "Dispense" means:

(a) To receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party; or

(b) To distribute noncontrolled legend drugs from a local, district, and independent health department, subject to the direction of the appropriate governing board of the individual health department;

(18) "Dialysis care" means a process by which dissolved substances are removed from a patient's body by diffusion, osmosis, and convection from one (1) fluid compartment to another across a semipermeable membrane;

(19) "Dialysis technician" means a person who is not a nurse, a physician assistant, or a physician and who provides dialysis care in a licensed renal dialysis facility under the direct, on-site supervision of a registered nurse or a physician; and

(20) "Clinical internship" means a supervised nursing practice experience which involves any component of direct patient care.

Section 2. KRS 314.042 is amended to read as follows:

(1) An applicant for registration and designation to practice as an advanced registered nurse practitioner shall file with the board a written application for registration and designation and submit evidence, verified by oath, that the applicant has completed an organized postbasic program of study and clinical experience acceptable to the board; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally-established organization or agency recognized by the board to certify registered

nurses for advanced nursing practice; and is able to understandably speak and write the English language and to read the English language with comprehension.

(2) The board may issue a registration to practice advanced registered nursing to an applicant who holds a current active registered nurse license issued by the board and meets the qualifications of subsection (1) of this section. An advanced registered nurse practitioner shall be designated by the board as a nurse anesthetist, nurse midwife, nurse practitioner, or clinical nurse specialist.

(3) The applicant for registration and designation or renewal thereof to practice as an advanced registered nurse practitioner shall pay a fee to the board as set forth in regulation by the board.

(4) An advanced registered nurse practitioner shall maintain a current active registered nurse license issued by the board and maintain current certification by the appropriate national organization or agency recognized by the board.

(5) Any person who holds a registration and designation to practice as an advanced registered nurse practitioner in this state shall have the right to use the title "advanced registered nurse practitioner" and the abbreviation "ARNP." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is an advanced registered nurse practitioner. No person shall practice as an advanced registered nurse practitioner unless registered under this section.

(6) Any person heretofore registered as an advanced registered nurse practitioner under the provisions of this chapter who has allowed the registration to lapse may be reinstated on payment of current fee and by meeting the provisions of this chapter and regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A.

(7) The board may authorize a person to practice as an advanced registered nurse practitioner temporarily and pursuant to applicable regulations promulgated by the

board pursuant to the provisions of KRS Chapter 13A if the person is awaiting the results of the national certifying examination for the first time or is awaiting licensure by endorsement. A person awaiting the results of the national certifying examination shall use the title "ARNP Applicant" or "ARNP App."

(8) Before an advanced registered nurse practitioner engages in the prescribing or dispensing of nonscheduled legend drugs as authorized by KRS 314.011(8), the advanced registered nurse practitioner shall enter into a written "Collaborative ~~[practice]~~ Agreement ***for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Nonscheduled Legend Drugs" (CAPA-NS)*** with a physician that defines the scope of the prescriptive authority ***for nonscheduled legend drugs***.

(9) ***Before an advanced registered nurse practitioner engages in the prescribing of Schedules II through V controlled substances as authorized by KRS 314.011(8), the advanced registered nurse practitioner shall enter into a written "Collaborative Agreement for the Advanced Registered Nurse Practitioner's Prescriptive Authority for Controlled Substances" (CAPA-CS) with a physician that defines the scope of the prescriptive authority for controlled substances.***

(a) The advanced registered nurse practitioner shall notify the Kentucky Board of Nursing of the existence of the CAPA-CS and the name of the collaborating physician and shall, upon request, furnish to the board or its staff a copy of the completed CAPA-CS. The Kentucky Board of Nursing shall notify the Kentucky Board of Medical Licensure that a CAPA-CS exists and furnish the collaborating physician's name.

(b) The CAPA-CS shall be in writing and signed by both the advanced registered nurse practitioner and the collaborating physician. A copy of the completed collaborative agreement shall be available at each site where the advanced registered nurse practitioner is providing patient care.

(c) The CAPA-CS shall describe the arrangement for collaboration and communication between the advanced registered nurse practitioner and the collaborating physician regarding the prescribing of controlled substances by the advanced registered nurse practitioner.

(d) The advanced registered nurse practitioner who is prescribing controlled substances and the collaborating physician shall be qualified in the same or a similar specialty.

(e) The CAPA-CS is not intended to be a substitute for the exercise of professional judgment by the advanced registered nurse practitioner or by the collaborating physician.

(f) Before engaging in the prescribing of controlled substances, the advanced registered nurse practitioner shall:

1. Have been registered to practice as an advanced registered nurse practitioner for one (1) year with the Kentucky Board of Nursing; or

2. Be nationally certified as an advanced registered nurse practitioner and be registered, certified, or licensed in good standing as an advanced registered nurse practitioner in another state for one (1) year prior to applying for licensure by endorsement in Kentucky.

(g) Prior to prescribing controlled substances, the advanced registered nurse practitioner shall obtain a Controlled Substance Registration Certificate through the U.S. Drug Enforcement Agency.

(h) The CAPA-CS shall be reviewed and signed by both the advanced registered nurse practitioner and the collaborating physician and may be rescinded by either party upon written notice via registered mail to the other party, the Kentucky Board of Nursing, and the Kentucky Board of Medical Licensure.

(i) The CAPA-CS shall state the limits on controlled substances which may be prescribed by the advanced registered nurse practitioner, as agreed to by the

advanced registered nurse practitioner and the collaborating physician. The limits so imposed may be more stringent than either the schedule limits on controlled substances established in subsection (8) of Section 1 of this Act, or the limits imposed in regulations promulgated by the Kentucky Board of Nursing thereunder.

(10) Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to enter into a collaborative practice agreement with a physician, pursuant to this chapter or any other provision of law, in order to deliver anesthesia care.

Section 3. KRS 314.195 is amended to read as follows:

An advanced registered nurse practitioner shall be considered a practitioner for purposes of KRS ***Chapters***~~[Chapter]~~ 217 ***and 218A*** and shall have the authority granted to a practitioner pursuant to those chapters subject to the conditions set forth in KRS 314.042.

Section 4. KRS 218A.010 is amended to read as follows:

As used in this chapter:

(1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or

(b) The patient or research subject at the direction and in the presence of the practitioner.

(2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids.

(3) "Cabinet" means the Cabinet for Health and Family Services.

(4) "Child" means any person under the age of majority as specified in KRS 2.015.

(5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue.

(6) (a) "Controlled substance analogue", except as provided in subparagraph (b), means a substance:

1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and

2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or

3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.

(b) Such term does not include:

1. Any substance for which there is an approved new drug application;

2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or

3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance.

(7) "Counterfeit substance" means a controlled substance which, or the container or

labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user.

(10) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(11) "Drug" means:

(a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in this subsection.

It does not include devices or their components, parts, or accessories.

(12) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:

(a) Poses an explosion hazard;

(b) Poses a fire hazard; or

(c) Is poisonous or injurious if handled, swallowed, or inhaled.

(13) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture.

(14) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine.

(15) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer.

(16) "Manufacture", except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:

(a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and

not for sale; or

(c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice.

(17) "Marijuana" means all parts of the plant Cannabis sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances.

(18) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers.

(19) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;

(b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;

(c) Opium poppy and poppy straw;

(d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;

(e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and

(g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection.

(20) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(21) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

(22) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(23) "Physical injury" has the same meaning it has in KRS 500.080.

(24) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(25) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy.

(26) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, ***advanced registered nurse practitioner as authorized under Section 1 of this Act,*** or other person licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist,~~[or]~~ veterinarian, ***or advanced registered nurse practitioner authorized under Section 1 of this Act*** who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail.

(27) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian,~~[or]~~ optometric practitioner, ***or advanced registered nurse practitioner,*** and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals.

(28) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216.

(29) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(30) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter.

(31) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution.

(32) "Serious physical injury" has the same meaning it has in KRS 500.080.

(33) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;

2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers;

3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

(34) "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance.

(35) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution.

(36) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

Section 5. KRS 218A.202 is amended to read as follows:

(1) The Cabinet for Health and Family Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy.

(2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.

(3) Every dispenser within the Commonwealth or any other dispenser who has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy shall report to the Cabinet for Health and Family Services the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:

(a) A drug administered directly to a patient; or

(b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.

(4) Data for each controlled substance that is dispensed shall include but not be limited to the following:

(a) Patient identifier;

(b) Drug dispensed;

(c) Date of dispensing;

(d) Quantity dispensed;

(e) Prescriber; and

(f) Dispenser.

(5) The data shall be provided in the electronic format specified by the Cabinet for Health and Family Services unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.

(6) The Cabinet for Health and Family Services shall be authorized to provide data to:

(a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a bona fide specific investigation involving a designated person;

(b) A Kentucky peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal peace officer whose duty is to enforce the laws of this Commonwealth, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;

(c) A state-operated Medicaid program;

(d) A properly convened grand jury pursuant to a subpoena properly issued for the records;

(e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient;

(f) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:

1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing practices;

2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or

3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area;~~[or]~~

(g) ***In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Nursing, for any advanced registered nurse practitioner who is:***

1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing practices;

2. Associated in a partnership or other business entity with an advanced registered nurse practitioner who is already under investigation by the Board of Nursing for improper prescribing practices;

3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or

4. In a designated geographic area for which a report on a physician or

another advanced registered nurse practitioner in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or

(h) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.

(7) The Department for Medicaid Services may use any data or reports from the system for the purpose of identifying Medicaid recipients whose usage of controlled substances may be appropriately managed by a single outpatient pharmacy or primary care physician.

(8) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction, except that:

(a) A peace officer specified in subsection (6)(b) of this section who is authorized to receive data or a report may share that information with other peace officers specified in subsection (6)(b) of this section authorized to receive data or a report if the peace officers specified in subsection (6)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each law enforcement agency engaged in the investigation; and

(b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board

designated in paragraph (a) of subsection (6) of this section, or with a law enforcement officer designated in paragraph (b) of subsection (6) of this section; and

(c) The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.

(9) The Cabinet for Health and Family Services, all peace officers specified in subsection (6)(b) of this section, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.

(10) The data and any report obtained therefrom shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.

(11) Knowing failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor.

(12) Knowing disclosure of transmitted data to a person not authorized by subsection (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony.

(13) The Commonwealth Office of Technology, in consultation with the Cabinet for Health and Family Services, shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall:

(a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access

program; and

(b) Study the use of an interactive system that includes a relational data base with query capability.

(14) Provisions in this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13) of this section.

(15) The Cabinet for Health and Family Services may limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.

(16) (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.

(b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.

(c) The cabinet shall work with the Justice Cabinet for the development of a continuing education program for law enforcement officers about the purposes and users of the electronic system for monitoring established in this section.

President of the Senate

Speaker-House of Representatives

Attest: _____
Chief Clerk of Senate

Approved _____
Governor

Date March 6, 2006